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GOOGLE INC.

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 ORACLE AMERICA, INC.,
16 Plaintiffs,
17 v.
18 GOOGLE INC.,
19 Defendant.

Case No. 3:10-cv-03561 WHA

**GOOGLE'S NOTICE OF MOTION AND
MOTION TO REDACT AND SEAL
PORTIONS OF THE APRIL 13, 2016
HEARING TRANSCRIPT**

Date: May 26, 2016
Time: 8:00 a.m.
Dept. Courtroom 8, 19th Floor
Judge: Hon. William Alsup

NOTICE OF MOTION

PLEASE TAKE NOTICE that on May 26, 2016, at 8:00 a.m., or as soon thereafter as the matter may be heard before the Honorable William Alsup, 450 Golden Gate Avenue, San Francisco, California, Courtroom 8, 19th Floor, defendant Google, Inc. (“Google”) will and hereby does move this Court, pursuant to the Northern District of California’s Civil Local Rule 7-2 and General Order 59, paragraph 4, for an order redacting and sealing portion of the transcript from the April 13, 2016 hearing held before the Court. This Motion is based on this Notice and the below Memorandum of Points and Authorities filed herewith, the declarations of Maya Karwande and Renny Hwang, any reply memoranda that may be filed, the argument of counsel, the case record, and any documentary evidence that may be presented at the time of the hearing.

RELIEF REQUESTED

Google seeks an order redacting the dollar amount at page 97, line 3 of the transcript from the April 13, 2016 hearing, on the grounds that plaintiff Oracle America, Inc. (“Oracle”) improperly revealed during that hearing sensitive, non-public financial information relating to Android.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Pursuant to the Northern District of California’s Civil Local Rule 7-2 and General Order 59 Google hereby brings this motion to redact and seal Google-confidential financial information that Oracle improperly disclosed at an April 13, 2016 hearing in violation of the Protective Order governing this case. Specifically, Oracle disclosed sensitive non-public financial information relating to Android. Judge Ryu has previously sealed, under the good cause standard, very similar information when it was disclosed by Oracle during a hearing on January 14, 2016. *See* ECF No. 1541. As this information also meets the “compelling reasons” standard this Court has held is applicable to pretrial proceedings, Google respectfully requests, pursuant to General Order 59, that the Court seal and redact this “exceptionally sensitive information.”¹ *See* ECF No. 540.

BACKGROUND

At the April 13, 2016 hearing on motions *in limine*, Oracle’s counsel disclosed highly sensitive, non-public financial information relating to Android, which was derived from internal Google financial documents designated “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” under the Protective Order. Although the Protective Order requires that “parties shall give the other parties notice if they reasonably expect a deposition, hearing or other proceeding to include Protected Material,” [ECF. No. 66 ¶ 5.2(b)], Oracle provided no notice to Google that it intended to disclose this information at the April 13 hearing. Declaration of Maya Karwande (“Karwande Decl.”) at ¶ 2.

DISCUSSION

A compelling justification to seal information exists when disclosure of “business information . . . might harm a litigant’s competitive standing.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978); *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir.

¹ As Judge Ryu held in her order granting Google’s motion to seal and redact portions of the January 14, 2016 hearing, “The Northern District of California promulgated General Order 59, which sets forth a procedure for parties to request redactions from electronically available hearing transcripts through noticed motion. General Order 59 does not include a requirement that the party first make an oral motion at the hearing.” ECF No. 1541 at 4.

2006); N.D. Cal. Civ. L.R. 79-5(a). Courts have therefore concluded that it is appropriate to seal information containing sensitive financial information and similar trade secrets information. *Apple Inc. v. Samsung Elecs. Co. Ltd.*, 727 F.3d 1214, 1224-26 (Fed. Cir. 2013) (district court abused discretion by not sealing portions of documents containing sensitive financial information under the compelling reasons standard); *Clark v. Bunker*, 453 F.2d 1006, 1009 (9th Cir. 1972) (defining trade secret).

Google does not publicly allocate revenues to Android separate and apart from Google's general business. Declaration of Renny Hwang ("Hwang Decl.") at ¶ 3. That non-public financial data is highly sensitive, and public disclosure could have "significant negative effects on Google's business." *Id.* Because disclosure of this "business information . . . might harm [Google's] competitive standing," there is a compelling justification to seal information of the kind described above. *Nixon*, 435 U.S. at 598. Indeed, the Court has previously granted motions to seal these types of materials, under the good cause standard, in this case. *See, e.g.*, ECF No. 1541 (granting motion to seal Google financial information); ECF No. 1375 (same).

In view of the sensitive, non-public nature of this financial information, Google respectfully requests that the portion of the April 13, 2016 hearing transcript containing non-public financial information be redacted and sealed.

CONCLUSION

The information that Google seeks to redact and seal in this motion is narrowly tailored to the portion of the April 13, 2016 hearing transcript at page 97, line 3, containing the dollar amount that reflects non-public financial information. Public access to this highly sensitive and confidential information would unnecessarily harm Google. Accordingly, for the foregoing reasons, Google respectfully requests that the Court redact and seal this limited portion of the April 13, 2016 transcript.

1 Dated: April 18, 2016

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